

STATE OF MICHIGAN
COURT OF APPEALS

LINDA REAM and TERRY REAM,

Plaintiff-Appellees,

UNPUBLISHED
February 1, 2005

v

BURKE ASPHALT PAVING, JOHN BURKE,
and CHAN CULBERT

No. 238824
Ingham Circuit Court
LC No. 99-091090-NI

Defendant-Appellants.

ON REMAND

Before: Meter, P.J., and Talbot and Borrello, JJ.

TALBOT, J. (*dissenting*).

I respectfully dissent. Under MCL 500.3135 a person remains subject to tort liability for noneconomic loss caused by his use of a motor vehicle only if the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement. As used in this section, “serious impairment of body function” means “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” MCL 500.3135(7).

In *Kreiner v Fischer*, 471 Mich 109, 130-134; 683 NW2d 611 (2004), our Supreme Court provided a three-step framework for determining whether a plaintiff meets the serious impairment threshold. First, it must be determined whether a factual dispute exists “concerning the nature and extent of the person’s injuries; or if there is a factual dispute, that it is not material to the determination whether the person has suffered a serious impairment of body function.” *Id.* at 131-132. If there are material factual disputes, courts may not decide the issue as a matter of law. In the instant case, no material question of fact exists regarding the nature and extent of plaintiff’s injuries. Rather, defendant merely contends that plaintiff’s injuries have not affected his ability to lead his normal life. Consequently, the issue may be decided as a matter of law. *Id.* at 132.

Where the issue may be decided as a matter of law, the second step in the analysis is to determine whether “an ‘important body function’ of the plaintiff has been impaired.” *Id.* at 132. In this case, objective medical evidence was presented to show that plaintiff suffered significant injuries to his right leg, right arm and back. Defendants did not contend that these injuries did not affect several of Terry Ream’s important body functions. However, they did argue that the

injuries did not satisfy the third part of the analysis because they did not affect his general ability to lead his normal life.

Where a court finds an objectively manifested impairment of an important bodily function, “it then must determine if the impairment affects the plaintiff’s general ability to lead his or her normal life.” *Id.* at 132. The Court explained that:

[T]o “lead” one’s normal life contemplates more than a minor interruption in life. To “lead” means, among other things, “to conduct or bring in a particular course.” Given this meaning, the objectively manifested impairment of an important body function must affect the course of a person’s life. Accordingly, the effect of the impairment on the course of a plaintiff’s entire normal life must be considered. Although some aspects of a plaintiff’s entire normal life may be interrupted by the impairment, if, despite those impingements, the course or trajectory of the plaintiff’s normal life has not been affected, then the plaintiff’s “general ability” to lead his normal life has not been affected and he does not meet the “serious impairment of body function” threshold. [*Id.* at 130-131 (footnotes omitted).]

Thus, “[w]hile an injury need not be permanent, it must be of sufficient duration to affect the course of a plaintiff’s life.” *Id.* at 135.

In *Kreiner, supra*, the Supreme Court found that the injuries the plaintiff suffered to his lower back, hip, and leg failed to meet the statutory requirements. *Kreiner, supra*, at 137. It noted that, with the possible exception of roofing work, he continued to be able to work as a self-employed carpenter. *Id.* Although Kreiner stated that he could no longer stand on a ladder for more than twenty minutes, lift anything over eighty pounds, or work more than six hours a day, these limitations did not prevent him from performing his job. *Id.* The Court further noted that, although Kreiner had difficulty walking more than a half mile without resting and could no longer hunt rabbits, he continued to hunt deer. *Id.* After examining Kreiner’s life before and after the accident and looking at the extent and nature of his injuries, the Court concluded that “his impairment did not affect his overall ability to conduct the course of his normal life.” *Id.*

A comparison between the facts of *Kreiner* and those in this case compels the conclusion that Terry Ream’s injuries did not affect his general ability to lead his normal life. He continued to work full time without restrictions. Although he missed two months of work, in the companion case to *Kreiner, Straub v Collette*, the plaintiff also missed two months of work, and the Court characterized it as a “temporary limitation” that did not meet the requirement. *Id.* at 136. Although Ream claims that residual impairments prevent him from performing some activities, such as certain types of hunting and fishing and playing softball, there is no evidence in the record suggesting that Ream’s doctors placed ongoing restrictions on his activities. In regard to residual impairments, the Court noted, “Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish this point.” *Id.* at 133, n 17. Consequently, under the holding of *Kreiner, supra*, Ream did not meet the threshold for recovery for noneconomic damages under the no-fault act.

/s/ Michael J. Talbot